

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MC ALLEN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO: 7:16-CR-01612-1
	)	
Plaintiff,	)	CRIMINAL
	)	
vs.	)	McAllen, Texas
	)	
JESUS MURILLO,	)	Wednesday, March 8, 2017
	)	(2:10 p.m. to 2:25 p.m.)
<u>Defendant.</u>	)	

REARRAIGNMENT

BEFORE THE HONORABLE MICAELA ALVAREZ,  
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Candy Jones
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ORIGINAL AND ONE COPY AT THE OFFICIAL RATE.  
General Order 94-15, United States District Court,  
Southern District of Texas.**

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

APPEARANCES FOR:

Plaintiff:

ROBERTO LOPEZ, JR., ESQ.  
Assistant United States Attorney  
1701 W. Business Hwy. 83  
Suite 600  
McAllen, TX 78501

Defendant:

ALEJANDRO BALLESTEROS, ESQ.  
Ballesteros Gonzalez Law Firm, PLLC  
3900 N. Tenth Street, Suite 980  
McAllen, TX 78501

U.S. Probation Office:

Jimmy Lugo  
1701 W. Business Hwy. 83  
Suite 729  
McAllen, TX 78501

McAllen, Texas; Wednesday, March 8, 2017; 2:10 p.m.

(Call to order)

**THE COURT:** Let me work backwards, if I could begin with the last one called, that is Jesus Murillo, and that's 16-1612. Mr. Murillo, please raise your right hand to be sworn in.

(Defendant sworn)

**THE COURT:** Mr. Murillo, you have just been sworn in. You are under oath. That means that you are subject to the penalties of perjury and that any statement you make here today can be used against you; do you understand that?

**THE DEFENDANT:** Yes, your Honor.

**THE COURT:** Just by way of background, Mr. Murillo, how old are you?

**THE DEFENDANT:** Twenty-four.

**THE COURT:** What kind of schooling do you have?

**THE DEFENDANT:** Finished high school and some medical assistant certified.

**THE COURT:** Okay. Are you a citizen of the United States?

**THE DEFENDANT:** Yes, your Honor.

**THE COURT:** Are you now or have you ever been under the care of any doctor, psychologist, psychiatrist, any kind of mental health professional for any mental health issues?

**THE DEFENDANT:** No, your Honor.

1           **THE COURT:** Are you now under the influence of any  
2 alcohol, drugs, or medication?

3           **THE DEFENDANT:** No, your Honor.

4           **THE COURT:** Within the last 48 hours, have you taken  
5 any alcohol, drugs, or medication?

6           **THE DEFENDANT:** No, your Honor.

7           **THE COURT:** Have you talked with your attorney about  
8 the charges that you are facing?

9           **THE DEFENDANT:** Yes, your Honor.

10           **THE COURT:** Your attorney indicated you're pleading  
11 to Count Two so I'm going to cover that charge with you only,  
12 even though there's other charges as well, and that charge is  
13 as follows: That on or about October the 9th, 2015, in the  
14 Southern District of Texas and within the jurisdiction of the  
15 Court, that you, in connection with the acquisition of a  
16 firearm, namely three Romar Cougar (sic) WASR-10 7.62 caliber  
17 rifles from FORZA Armory LLC in Edinburg, Texas, a federally  
18 licensed firearms dealer, under Chapter 44 of Title 18 of the  
19 United States Code; that you knowingly aided, abetted,  
20 counseled, commanded, or induced or procured the commission of  
21 the making of a false or fictitious written statement to FORZA  
22 Armory LLC, which statement was intended and likely to deceive  
23 FORZA Armory, LLC as to a fact material to the lawfulness of  
24 the sale of the firearms under Chapter 44 of Title 18 of the  
25 United States Code; and that you caused Marella Sandoval to

1 falsely represent on the Bureau of Alcohol, Tobacco, and  
2 Firearms Form 4473 that she was the actual buyer of the firearm  
3 described above, when in truth and in fact you knew that those  
4 statements and representations were false, and that Marella  
5 Sandoval was not the actual buyer of the firearm. In violation  
6 of Title 18, United States Code, Section 922(a)(6), 924(a)(2),  
7 and Section 2. So basically the charge, Mr. Murillo, is that  
8 you in some manner -- and we use the terms "aided, abetted,  
9 counseled, commanded, or induced," but basically it just means  
10 that you in some manner or other got Ms. Sandoval to make a  
11 false statement, that you knew that this statement was false,  
12 that the statement was made in connection with the acquisition,  
13 that is the purchase, of the firearm and when you knew that the  
14 statements were in fact false. Do you understand the charge?

15 **THE DEFENDANT:** Yes, your Honor.

16 **THE COURT:** Do you have any questions about the  
17 charge?

18 **THE DEFENDANT:** No, your Honor.

19 **THE COURT:** In connection with this charge,  
20 Mr. Murillo, you have certain rights. You have the right to be  
21 represented by a lawyer, as you are being represented here  
22 today. You have that right even if you cannot afford a lawyer;  
23 do you understand that?

24 **THE DEFENDANT:** Yes, your Honor.

25 **THE COURT:** You also have the right to enter a plea

1 of not guilty to the charge, as you did to begin with. If you  
2 want to go forward with a plea of not guilty, you have the  
3 right to have a jury trial. The jury is made up of 12 citizens  
4 of this community, and the jury is the one that would decide  
5 whether you are guilty or not guilty. In connection with a  
6 jury trial, you have the right to have the Government present  
7 the witnesses that the Government has to testify against you.  
8 You have the right through your attorney to ask questions of  
9 those witnesses. You have the right to present witnesses of  
10 your own. And you also have the right to testify if you want  
11 to testify, which you do not have to do so. If you choose not  
12 to testify, the fact that you chose not to testify is not  
13 considered by the jury as being evidence that you are guilty or  
14 evidence of anything else in the case. These are rights that  
15 you have if you wish to go forward with a plea of not guilty;  
16 do you understand this?

17 **THE DEFENDANT:** Yes, your Honor.

18 **THE COURT:** If you do enter a plea of guilty, you  
19 will be giving up these rights because if you enter a plea of  
20 guilty, we do not have a jury trial; I am the one to decide  
21 whether you are guilty. We do not have any of the witnesses  
22 presented except for yourself. You become a witness because  
23 the Government's attorney will tell me the facts of your case.  
24 I will ask you some questions about those facts and you will  
25 need to answer those questions for me, which of course also

1 means that you give up your right to remain silent; do you  
2 understand this?

3 **THE DEFENDANT:** Yes, your Honor.

4 **THE COURT:** With that understanding, then do you wish  
5 to give up the right to have a jury trial, the right to have  
6 the witnesses presented, both yours and the Government's, the  
7 right to be able to ask questions of those witnesses, and the  
8 right to remain silent; do you want to give up those rights by  
9 entering a plea of guilty?

10 **THE DEFENDANT:** Yes, your Honor.

11 **THE COURT:** Have you talked with your attorney about  
12 what kind of punishment you may be facing if you are found  
13 guilty in this case?

14 **THE DEFENDANT:** Yes, your Honor.

15 **THE COURT:** The law provides that you are facing up  
16 to ten years of prison time. There's no minimum requirement,  
17 but it can be all the way up to ten years of prison time; do  
18 you understand that?

19 **THE DEFENDANT:** Yes, your Honor.

20 **THE COURT:** The law also provides that you can be  
21 placed on what we call supervised release for up to three  
22 years. Supervised release is a period of time after you have  
23 been released from custody. You are not in prison, you are in  
24 your home community, wherever that may be, but you are still  
25 under the Court's supervision through the Probation Department.

1 You are ordered to do or not do certain things, and violating  
2 any of the Court's orders could result in you having to come  
3 back to Court and serving more time for this offense, even if  
4 you have not committed a new offense. Do you understand this?

5 **THE DEFENDANT:** Yes, your Honor.

6 **THE COURT:** The law also provides that you can be  
7 ordered to pay a fine of up to \$250,000, and the law requires  
8 you be ordered to pay \$100. The fine depends on whether you  
9 can afford to pay the fine, but the \$100 is regardless of  
10 whether you can afford to pay it; do you also understand that?

11 **THE DEFENDANT:** Yes, your Honor.

12 **THE COURT:** Also, in connection with this charge the  
13 Government has given you notice of forfeiture. Basically what  
14 that means is that the Government has put you on notice that  
15 the Government will seek to take both title to and possession  
16 of the weapons involved, not just in this particular count but  
17 in the various counts here. Whenever the Government is trying  
18 to take property that another person may have an interest in,  
19 then that person has a right to assert that -- a claim to that  
20 property, either through a court case such as this or  
21 separately through what we call an administrative proceeding.  
22 Do you understand both that the Government has given you notice  
23 of forfeiture and that you do have certain rights in connection  
24 with that notice?

25 **THE DEFENDANT:** Yes, your Honor.



1           **THE COURT:** Addressing again the issue of what you  
2 may be facing as far as sentencing, the Court has to follow the  
3 law that I just explained to you about how much time you may be  
4 facing, but the Court also has to consider something that we  
5 call the guidelines. Did you talk with your attorney about the  
6 guidelines, or perhaps you reviewed a chart that looks like  
7 this?

8           **THE DEFENDANT:** Yes, your Honor.

9           **THE COURT:** The guidelines provide a way that we come  
10 up with a range of months that I have to consider in deciding  
11 your actual sentence. There's a lot that goes into calculating  
12 the guideline. For a charge such as this, primarily the number  
13 of weapons involved and the ammunition and anything else that  
14 may have been involved. But it also takes into account other  
15 things as well as your criminal history. At the time of  
16 sentencing, I have to consider the guidelines that apply to  
17 your case, but I do not have to follow those guidelines; do you  
18 understand that?

19           **THE DEFENDANT:** Yes, your Honor.

20           **THE COURT:** In other words, I could decide to  
21 sentence you to something that is within your guideline range  
22 or something that is less than your guideline range, or  
23 something that is more than your guideline range, provided I do  
24 not sentence you to more than ten years; do you also understand  
25 that?

1           **THE DEFENDANT:** Yes, your Honor.

2           **THE COURT:** It's also important that you understand  
3 that while I expect your attorney has told you the guideline  
4 range that your attorney thinks will apply to your case, that  
5 is not a promise or a guarantee. I am the one that decides  
6 what the correct guideline range is. I do not do that until  
7 the time of sentencing; do you also understand that?

8           **THE DEFENDANT:** Yes, your Honor.

9           **THE COURT:** Do you have any questions about the  
10 things I have covered with you?

11           **THE DEFENDANT:** No, your Honor.

12           **THE COURT:** Have you understood all of these things  
13 that I've covered with you?

14           **THE DEFENDANT:** Yes, your Honor.

15           **THE COURT:** Is there a plea agreement as to  
16 Mr. Murillo?

17           **MR. LOPEZ:** Yes, your Honor, and it reads in  
18 pertinent part the Defendant agrees to plead guilty to Count  
19 Two of his superseding indictment, to waive any and all  
20 interest in the assets listed in the notice of forfeiture and  
21 to the judicial or administrative forfeiture of any and all  
22 firearms, weapons, and ammunition seized in connection with  
23 this case including, but not limited to the: one Kel-Tec Model  
24 P3AT .380 caliber pistol, the one Rock Island Armory Model  
25 M1911-A1 FS .38 super caliber pistol, one IO Incorporated Model

1 Sporter 7.62 caliber rifle, one Remington Model 700 .308  
2 caliber rifle, a hundred rounds of .38 super caliber  
3 ammunition, 19 rounds of .308 caliber ammunition, and one .38  
4 super caliber magazine. The Defendant agrees to waive any and  
5 all procedural notice requirements for forfeiture. And in  
6 exchange, the Government will recommend the offense level  
7 decrease by two levels pursuant to United States Sentencing  
8 Guideline Section 3E1.1(a) if the Defendant clearly  
9 demonstrates acceptance of responsibility. And that the  
10 remaining counts of the original indictment and superseding  
11 indictment be dismissed at the time of sentencing.

12 **THE COURT:** Mr. Murillo, the Government indicates you  
13 have signed a plea agreement, and I believe your attorney has  
14 it there. If you could, look at that and confirm for me that  
15 you have in fact signed that plea agreement.

16 **THE DEFENDANT:** Yes, your Honor.

17 **THE COURT:** And did you review that agreement with  
18 your attorney before you signed it?

19 **THE DEFENDANT:** Yes, your Honor.

20 **THE COURT:** The Government indicates that the plea  
21 agreement basically provides for you to plead guilty to Count  
22 Two of the indictment, and also to waive any rights that you  
23 have regarding the ammunitions and weapons here. That is in  
24 connection with the forfeiture that I touched on earlier. And  
25 that the Government will recommend two levels off for what we

1 call "acceptance of responsibility," and then dismiss the other  
2 counts in the original indictment, as well as the superseding  
3 indictment. Is that what you understand your agreement with  
4 the Government to be?

5 **THE DEFENDANT:** Yes, your Honor.

6 **THE COURT:** It's important that you understand that  
7 the agreement you have made is only between you and the  
8 Government. It is not an agreement with the Court. By that I  
9 mean that if you do enter a plea of guilty and I find you  
10 guilty, your case will be set for sentencing. At the time of  
11 sentencing, I will consider the recommendation made to me by  
12 the Government, but I do not have to follow those  
13 recommendations. And even if I do not follow those  
14 recommendations, I do not have to allow you to withdraw your  
15 plea of guilty; do you understand that?

16 **THE DEFENDANT:** Yes, your Honor.

17 **THE COURT:** Other than the agreements as reflected in  
18 the plea agreement, do you believe there has been any other  
19 sort of promise made to you by anybody, whether that be the  
20 Government, your attorney, or anybody else, to get you to plead  
21 guilty?

22 **THE DEFENDANT:** No, your Honor.

23 **THE COURT:** Has anybody threatened you or tried to  
24 force you or coerce you into entering a plea of guilty?

25 **THE DEFENDANT:** No, your Honor.

1           **THE COURT:** Do you wish to enter a plea of guilty  
2 freely and voluntarily?

3           **THE DEFENDANT:** Yes, your Honor.

4           **THE COURT:** And do you wish to do so because you are  
5 in fact guilty as charged in Count Two of your indictment?

6           **THE DEFENDANT:** Yes, your Honor.

7           **THE COURT:** As to Count Two then, Mr. Murillo, how do  
8 you plead, guilty or not guilty?

9           **THE DEFENDANT:** Guilty.

10          **THE COURT:** The Government is now going to state for  
11 me the facts of your case. Please listen carefully because I  
12 will then ask you a few questions.

13          **MR. LOPEZ:** Thank you, your Honor. On October 9,  
14 2015, the Defendant, Jesus Murillo, had recruited Marella  
15 Sandoval to purchase three Romarm Cugir WASR-10 7.62 caliber  
16 rifles from FORZA Armory, LLC, a federally licensed firearms  
17 dealer under Chapter 44 of Title 18 of the United States Code,  
18 located in Edinburg, Texas. In connection with the acquisition  
19 and purchase of the firearms, Sandoval executed a Bureau of  
20 Alcohol, Tobacco, and Firearms Form 4473 stating that she was  
21 the actual buyer of the firearms when in truth and in fact  
22 Sandoval knew that those statements were false and that she was  
23 not the actual buyer of the firearm. Defendant, Jesus Murillo,  
24 knew that Sandoval would be required to execute the Form 4473  
25 in connection with the purchase of the requested firearms, and

1 Defendant Murillo knew that Sandoval would make and did in fact  
2 make a false statement in connection with said purchase.  
3 Defendant Murillo and Sandoval knew that such false statement  
4 was material to the lawfulness of the sale of the firearms and  
5 was intended and likely to deceive FORZA Armory LLC, the  
6 federally licensed firearms dealer, as to such fact. Defendant  
7 Murillo aided, abetted, induced, and procured the commission of  
8 the making of the false statement by recruiting Marella  
9 Sandoval to make the purchase of the firearms, instructing  
10 Sandoval regarding the type of firearms to purchase, providing  
11 the funds for the purchase of the firearms, and paying Sandoval  
12 to make the purchases of the firearms.

13 **THE COURT:** Mr. Murillo, do you agree with what the  
14 Government stated?

15 **THE DEFENDANT:** Yes, your Honor.

16 **THE COURT:** Okay, so you understood that a person  
17 purchasing a firearm would have to fill out some paperwork  
18 indicating that that person was the actual buyer; is that  
19 correct?

20 **THE DEFENDANT:** Yes, your Honor.

21 **THE COURT:** And then you recruited Ms. Sandoval to  
22 actually make the purchase, either for you or for somebody  
23 else, knowing that she wouldn't be the actual purchaser; is  
24 that correct?

25 **THE DEFENDANT:** Yes, your Honor.

1           **THE COURT:** And you provided her with the money for  
2 the purchase itself.

3           **THE DEFENDANT:** Yes, your Honor.

4           **THE COURT:** And then also paid her for making the  
5 purchase.

6           **THE DEFENDANT:** Yes, your Honor.

7           **THE COURT:** Thank you, Mr. Murillo. The Court does  
8 find that you are competent to enter a plea, that you  
9 understand the nature of the charges against you, as well as  
10 the consequences of entering a plea of guilty, that you are  
11 entering a plea of guilty freely and voluntarily, and that  
12 there is a factual basis for the plea of guilty. The Court  
13 does find you guilty as charged in Count Two of the indictment.  
14 Your case will be set for sentencing on June the 7th at 9:00  
15 a.m., with a Presentence Investigation to be done and a report  
16 to be completed by April the 12th, objections to be filed by  
17 the 26th, with the final report due on May the 10th. Is there  
18 anything else as to Mr. Murillo?

19           **MR. BALLESTEROS:** Not at this time, your Honor.

20           **THE COURT:** All right, thank you. Then you --

21           **MR. BALLESTEROS:** May we be excused?

22           **THE COURT:** -- may be excused, yes.

23           **MR. BALLESTEROS:** Thank you, your Honor.

24           **(This proceeding was adjourned at 2:25 p.m.)**

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", positioned above a horizontal line.

August 30, 2017

TONI HUDSON, TRANSCRIBER